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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,981	02/19/2004	Michael J. Simmons	3141-6218US	4403
24247	7590	05/16/2007		
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			EXAMINER MCKINLEY, CHRISTOPHER BRIAN	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/783,981	Applicant(s) SIMMONS, DAVID	
	Examiner Christopher B. McKinley	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 19,43,46,47 and 51 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 40-42,44,45,48-50 and 52-75 is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7,9-18,20-24,27-32 and 34-36 is/are rejected.
- 7) ☒ Claim(s) 5,8,25,26,32,33 and 37-39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 February 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>11/2/2006</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/19/2004</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 6, 7 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Bruce et al. (6,419,112). Bruce et al. ('112) discloses all the limitations of the claims including a lid (fig. 1) comprising a radially extending body sized to engage a portion of a container (fig. 4, 22). It should be noted that the lid is capable of engaging a portion of a sleeve from another container having a select size and shape by way of a stabilizing feature (22).

Regarding claims 2-4, Bruce et al. ('112) discloses a lid configured to engage the rolled rim of a container (fig. 8), having an aperture (fig. 1, 38) and a downwardly oriented arcuate recess to engage the rolled rim of a container (fig. 4, 20).

Regarding claims 6, 7 and 9-11, Bruce et al. ('112) discloses a stabilizing feature positioned proximate to the rolled rim of the container (fig. 10, 32), also engaging a portion of the rolled rim (21), comprising an upwardly oriented arcuate recess (32) formed to engage a portion of the rolled rim of a sleeve structure and the feature is integrally formed with the lid.

3. Claims 1, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Weiss et al. (2002/0020708). Weiss et al. ('708) disclose all the limitations of the claims including a lid (fig. 1) comprising a radially extending body sized to engage a portion of a container (fig. 3). It should be noted that the lid is capable of engaging a portion of a sleeve from another container having a select size and shape by way of a stabilizing feature (fig. 1, 30). The stabilizing feature comprises circumferentially separated stabilizing features (34) wherein the features have an upwardly arcuate recess configured to engage at least a portion of the rolled time of a sleeve structure.

4. Claims 27-31 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by R.T. Jolly (3,257,025).

Regarding claims 27 and 28, R.T. Jolly ('025) discloses all the limitations of the claims including a sleeve structure (fig. 2) having a frustoconical shape, comprising a sidewall (22) configured to be assembled with a container (12) and further forming space between the two (34). It should be noted that the stabilizing feature (30) is capable of being configured to engage a portion of another, like sleeve structure assembled with another container positioned longitudinally above the container.

Regarding claims 29-31, R.T. Jolly ('025) discloses a stabilizing feature (fig. 2, 30) made to lie beyond the opening of the container, proximate to the rolled rim of the container and capable of engaging a portion the rolled rim of a another sleeve structure.

Regarding claims 34-36, R.T. Jolly ('025) discloses a stabilizing feature comprising an upwardly oriented arcuate recess (fig. 2, 30) capable of engaging the

rolled rim of another sleeve wherein the stabilizing feature (30) is integrally formed with the sleeve structure.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 15-18 and 20-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Goeking et al. (6,883,677). Goeking et al. ('677) discloses all the limitations of the claims including a container (fig. 17, 134) comprising a sidewall extending from the lower wall forming an opening (132) and an inwardly radial stabilizing feature (utmost portion of curled brim 146) sized and configured to engage a portion of a sleeve assembled with another container positioned longitudinally above the container (134).

Regarding claims 16-18, Goeking et al. ('677) discloses a stabilizing feature (fig. 17, 146) engaging a portion of the rolled rim (136) of the container, positioned beyond the opening of the container (132) and proximate to the rolled rim of the container.

Regarding claims 20-23, 25 and 26, Goeking et al. ('677) discloses a stabilizing feature (fig. 17, 146) comprising an upwardly arcuate recess, integrally formed on the

rolled rim (136) of the container (134) wherein there are two or more circumferentially separated stabilizing features.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bruce et al. ('112) in view of Newman (4,978,024). Bruce et al. ('112) describes the invention substantially as claimed, described in paragraph 5, excluding inwardly radial protrusions. However, Newman et al. ('024) teaches inwardly radial protrusion (fig. 2, 12) for the purpose of providing a means for gripping (column 3, lines 20-25). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Bruce et al. ('112) with inwardly radial protrusions for the purpose of gripping.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being obvious over Bruce et al. ('112). Bruce et al. ('112) discloses the claimed invention except for the stabilizing feature being removable. However, it would have been an obvious matter of design choice to make the stabilizing feature removable, since applicant has not disclosed that this limitation solves any stated problem or is for any particular purpose and it appears

that the invention would perform equally well with the stabilizing feature being integrally formed and non-removable. Moreover, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

10. Claim 24 is rejected under 35 U.S.C. 103(a) as being obvious over Goeking et al. ('677). Goeking et al. ('677) discloses the claimed invention except for the stabilizing feature being removable. However, it would have been an obvious matter of design choice to make the stabilizing feature removable, since applicant has not disclosed that this limitation solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the stabilizing feature being integrally formed and non-removable. Moreover, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Allowable Subject Matter

11. Claims 5, 8, 25, 26, 32, 33, 37-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 40-42, 44, 45, 48-50, 52-75 are allowed.

Response to Arguments

13. Applicant's arguments filed 2/22/2007 have been fully considered but they are not persuasive. Applicant contends that neither Bruce et al. ('112), Weiss et al ('708), Jolly ('025), Gale ('367), Goeking et al. ('677) nor Candy ('346) anticipate the respective claims to which they are applied however, it should be noted that the law of anticipation does not require that the reference teach what the appellant is claiming but only that the claims on appeal "read on" something disclosed in the reference. See *Kalman v. Kimberly Clark Corp.*, 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983). Where functional limitations are recited for the structure set forth in the claim, the reference must also include structure which is capable of performing the recited function in order for the reference to be properly anticipatory. See *In re Mott*, 557 F.2d 266, 194 USPQ 305 (CCPA 1977). As such, the limitation, "configured to engage at least a portion of a sleeve structure having a selected size and shape" describes intended use, functional language that is capable of being carried out by the reference(s), and does not render the claim patentable. Neither intended use or design limit the functionality of a particular reference.

Regarding Goekings, the arcuate rim, rolled upward is capable of accommodating a sleeve positioned above a container.

Regarding Candy, the claim does not include a lid fixed to the container as a limitation. As such, the reference anticipates the claim as previously shown.

Regarding the combination of Bruce et al and Newman et al. (4,978,024), Applicant contends that the combined references do not teach or suggest the claimed limitation but has given no indication as to what limitation is missing. Examiner affirms

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that the combined references teach the limitations of the claim as previously described above.


Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher B. McKinley whose telephone number is (571) 272-3370. The examiner can normally be reached on 7:00 AM - 3:30 AM.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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